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April 29, 2004

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Pick and Choose NPRM; CC Dockets 01-338, 96-98, 98-147; Review of
Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers**

Dear Ms. Dortch:

At the request of staff, SBC is filing the attached affidavit of Terri D. Mansir which discusses the current Pick and Choose Rule as it relates to SBC's interconnection agreement negotiations.

In accordance with Section 1.1206, I am filing this letter and attachment electronically and request that you place it in the record of the proceeding identified above. Thank you. A copy has been sent to Qualex.

Sincerely,

/s/ Jan S. Price

Attachment

cc: Jon Minkoff
Qualex International

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Review of the Section 251 Unbundling)	
Obligations of Incumbent Local)	CC Docket No. 01-338
Exchange Carriers)	
)	
Implementation of Local Competition)	
Provisions of the Telecommunications)	CC Docket No. 96-98
Act of 1996)	
)	
Deployment of Wireline Services)	
Offering Advanced Telecommunications)	CC Docket No. 98-147
Capability)	

**AFFIDAVIT OF TERRI D. MANSIR
REGARDING INTERCONNECTION AGREEMENT NEGOTIATIONS**

I, Terri D. Mansir, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

1. My name is Terri D. Mansir. My business address is 311 S. Akard, Room 2030.02, Dallas, Texas 75202. I am employed by Southwestern Bell Telephone, L.P. and serve as a Lead Negotiator of interconnection agreements ("ICA") pursuant to the federal Telecommunications Act. In this capacity, I act as SBC's wireline negotiator, working directly with Competitive Local Exchange Carriers in SBC's 13-State region. I have held this position for 4 years. Previously, I acted as a Negotiations Support Manager for SBC for 1 year.
2. I received a Bachelor of Science degree in Political Science from the University of Houston in 1987, and I will be completing a Master's in Business Administration from Dallas Baptist University in May 2004. I have been employed with Southwestern Bell since August 1999.

Prior to joining SBC, I worked as a Legal Assistant for several major Washington, D.C. firms in the practice areas of energy, antitrust and legislative.

PURPOSE

3. The purpose of my affidavit is to provide greater detail as to how the Commission's current Pick and Choose Rule frustrates negotiation of interconnection agreements ("ICAs"). In particular, I provide some specific examples of how CLECs have abused the current Pick and Choose Rule, and how the potential for such abuse hinders SBC's ability to offer innovative solutions to individual CLECs and thus reach negotiated rather than arbitrated agreements.

BACKGROUND

4. SBC has been negotiating in good faith with CLECs since the passage of the Telecommunications Act in 1996. The negotiation process is a series of gives and takes as two carriers work through operational issues associated with SBC's wholesale relationships with its CLEC customers. The negotiation process also often involves a series of individual resolutions of various issues between the parties culminating in an interconnection agreement in total. Such resolutions may include, for example, rates for products and services and the terms and conditions under which products and services will be provided, including certain operational provisions under which the carriers will interface in implementing the ICA.
5. The majority of ICAs are several hundred pages in length and may require months of negotiations. Over the course of the negotiation period, the carriers discuss ways to ensure that a resulting ICA will work for both carriers. During this give and take process, each side may "give a little" in one area in order to "get a little" in another, and these gives and takes may be reflected in separate sections of a single ICA, such as appendices on the provision of

unbundled network elements (“UNEs”), interconnection, and pricing. As in any commercial negotiation, this give and take process—and in particular the balance struck by the parties between the “gives” and the “takes”—is critical to voluntary negotiations.

6. On the other hand, providing carriers the opportunity to select only a specific term from an agreement—and thus upset the balance of “gives” and “takes” arrived at through negotiations—undermines the negotiation process and potentially causes operational issues. In my experience, some carriers seek to adopt only a specific term from an ICA, without agreeing to accept any “legitimately related” provisions, which undermines the negotiation process and could potentially result in future operational issues. No party should be permitted to accept the benefit of a negotiated term without also accepting all the “puts and takes” embodied throughout an agreement associated with that term. From a purely practical perspective, with almost two thousand ICAs in place throughout its 13-state region, it is nearly impossible to track each specific “give” and “take” in each ICA negotiation.
7. More fundamentally, because they allow CLECs to obtain the benefit of SBC’s “gives” without requiring them also to accept any CLEC’s “takes,” the FCC’s current Pick And Choose Rule has a negative effect on negotiations. When a comprehensive ICA is reached between SBC and a CLEC, there is no guarantee that another CLEC seeking to opt into only portions of a comprehensive agreement will be required to take all of the provisions associated with such ICA. There is thus no incentive for SBC to voluntarily negotiate with one of its wholesale customers over the course of several months for mutually beneficial interconnection agreement terms and conditions if other wholesale customers can cherry pick individual provisions from that agreement without also having to accept the concessions that were made in return for those provisions. More broadly, there is no incentive for SBC to

even consider voluntary negotiations of terms and conditions beyond its obligations under the Act if all of its CLEC customers can effectively avoid the negotiation process by cobbling together agreements from bits and pieces removed from other agreements with no regard to (1) legitimately related terms and conditions, (2) give and take on rates and other terms, or (3) the operational provisions of the interconnection agreements from which the bits and pieces were removed.

8. SBC has thus refrained from creating or offering unique ICA provisions to individual CLECs because of the possibility that other CLECs will try to employ the Pick and Choose Rule to opt in to those unique provisions divorced from all the other provisions of the ICAs in which any such unique provisions would be incorporated. Because of the defensive posture in which such an environment places SBC and other ILECs, the current Pick and Choose Rule encourages nothing more than “negotiation” of the minimum requirements under the Act.
9. SBC has endeavored to streamline the negotiation process by allowing CLECs to invoke MFN clauses in order to adopt entire sections of the X2A agreements that were created in SBC’s Southwest region as part of the section 271 approval process. Attachment 26 to the X2As, “Legitimately Related Provisions,” identifies the sections of an X2A agreement that can be adopted in whole as part of another interconnection agreement. This attachment provides the CLECs with greater flexibility in negotiating interconnection agreements and provides assurances to SBC and the CLECs that the related terms will be maintained in order to provide an interconnection agreement that is operational. For example, a particular CLEC desired to adopt the majority of one approved agreement, but felt that the language regarding interconnection did not sufficiently meet its business needs. The CLEC thus invoked Attachment 26 to incorporate into its ICA the interconnection section of SBC’s X2A.

Attachment 26 specifically identified the 4 attachments, associated pricing and 10 related general terms and conditions that made up the interconnection section of the X2A. These general terms and conditions included the expiration date, the notice provisions and applicable performance measures for these attachments. Though this created a bifurcated expiration date for the CLEC's new agreement, it was an example great efficiency for the parties.

10. Unfortunately, however, some CLECs have attempted to abuse even this streamlined negotiation process. Some CLECs have argued successfully to have Attachment 26 deleted from successor agreements, which creates much uncertainty in future negotiations and only further reduces any incentive for SBC to seek innovative approaches to voluntary negotiations.

EXAMPLES OF CLEC ABUSE OF THE PICK AND CHOOSE RULE

11. The Pick and Choose Rule has had a chilling effect on negotiations due to the gamesmanship of a few CLECs. In my experience, CLEC abuses of the current Pick and Choose Rule occur throughout SBC's operating region and are not restricted to any one carrier in any single region. In my experience negotiating hundreds of ICAs and amendments to ICAs, UNE-P-based providers tend to rely upon this rule more frequently than facility based providers, given that UNE-P-based providers are more reliant on SBC's network.
12. Though not in every instance, SBC's experience with these "pick and choose" negotiations has come from carriers represented by certain outside law firms who will engage this same methodology with multiple carriers. Sometimes, the same lawyer negotiates contracts for multiple CLECs, thus providing greater opportunity for CLECs to avail themselves of the Pick and Choose Rule.

13. I will now discuss some real world examples of how the pick and choose rules have been abused by CLECs during the negotiation process.

CLEC A

14. The first example is CLEC A¹ in the Southwest region. CLEC A represents a group of UNE-P, Resale and facility-based carriers which sought Intervener status in an arbitration docket that they had not initiated. CLEC A was permitted by the Administrative Law Judge (“ALJ”) to intervene in the docket on the condition that CLEC A adopt as its successor agreement the conforming agreement—in its entirety—which resulted from the arbitration proceeding. However, following approval of the conforming agreement between SBC and the original CLEC to the arbitration, CLEC A sought only to adopt, on a line-item basis, conforming language from the arbitrated agreement specific to issues upon which the underlying CLEC party had prevailed in the arbitration (without regard to any of the other language in the conforming agreement).

15. Several of the CLECs comprising CLEC A requested to adopt certain conforming appendices that resulted from the arbitration proceeding, *e.g.*, the appendix setting forth the terms under which SBC provides UNEs, because of the favorable resolution of many of the UNE issues in the arbitration. Those same CLECs, however, did not agree to adopt other appendices from the conforming agreement, *e.g.*, the appendix setting forth the terms under which CLECs interconnect with SBC, because they did not want to disturb their current interconnection contract language which they perceived as more favorable than the language in the conforming agreement that resulted from the arbitration. Many of the parties

¹ In order to maintain good faith working relationships with my clients, no specific carrier names will be identified in this affidavit. In this particular instance, CLEC A actually reflects several different carriers represented by different legal counsel.

representing CLEC A also wanted the benefits of any prospective reduced pricing resulting from the arbitration, but not necessarily the associated terms and conditions. In short, despite the order of the ALJ to the contrary, the CLECs wanted to cherry pick only what they perceived as the best provisions of the conforming agreement.

16. To date, a successor agreement has not been reached with the majority of the CLECs which comprise CLEC A.

CLEC B

17. In an SBC Midwest region state, CLEC B requested to adopt certain provisions contained in multiple approved and effective ICAs in that state. For example, CLEC B improperly sought to adopt one sentence relating to billing from one ICA, and alternate billing provisions from a different ICA. CLEC B's request did not seek to adopt any substantive provisions concerning Section 251 Arrangements (*i.e.*, UNEs, resale or interconnection) from an approved and effective ICA. Specifically, CLEC B sought to adopt an "accurate billing" provision from one ICA that placed no responsibility on the CLEC to assist SBC in issuing accurate wholesale bills or which required the CLEC to bill accurately, without regard to the other billing provisions in that ICA, *e.g.*, less favorable backbilling terms, and the provisions relating to the underlying Arrangements to which such billing provisions were legitimately related. Instead, CLEC B improperly sought to adopt a more favorable backbilling provision from another ICA, also without regard to the other billing provisions in that ICA and the underlying Arrangements to which such billing provisions were legitimately related. Finally, CLEC B also sought to adopt, on a line-item basis, rates from multiple ICAs in that state, some with the underlying arrangements to which they were legitimately related, and others without regard to the legitimately related arrangements. In sum, CLEC B sought to adopt

provisions that did not pertain to underlying Arrangements and legitimately related terms from multiple ICAs, all with different terms (*e.g.*, different expiration/termination dates). SBC objected to the request given that CLEC B was not seeking to adopt individual Arrangements and legitimately related terms from approved and effective ICAs in that state. However, SBC's objection to CLEC B's request (which is representative of various similar requests SBC has received over the years under the auspices of the FCC's existing Pick and Choose Rule), will likely result in a dispute resolution proceeding in which SBC is forced to defend its position.

CLEC C

18. CLEC C attempted to adopt and incorporate into its existing ICA a specific rate from another approved and effective ICA. The rate requested by CLEC C was based on a volume and term commitment that had been successfully and voluntarily negotiated by SBC and the party to the original ICA. However, CLEC C sought to adopt only the low rate, divorced from the associated volume and term commitments that were the basis of the rate in the first place. As a result of SBC's objection to CLEC C's request, SBC was forced to defend its position before the state Commission, including having to go through discovery and hearings before the state commission.

CLEC D

19. As another example of how the FCC's existing Pick and Choose Rule impedes negotiations, some CLECs have tried to adopt individual interconnection, network element and service Arrangements from multiple approved and effective ICAs in a state (*e.g.*, a Resale Appendix from one ICA, a UNE Appendix from another ICA and interconnection appendices from a third ICA). In such cases, the ICAs that contain the requested appendices contain different

general terms and conditions which are legitimately related to each of the requested appendices, including different terms/expiration dates.

20. With respect to requests such as this, extensive negotiations are sometimes required to reach agreement on the general terms and conditions which should govern the requesting CLEC's ICA (in which all of the requested appendices will be incorporated). In addition, there may be conflicting provisions in the three different appendices from three different agreements incorporated into the adopting CLEC's agreement which require negotiations to ensure that those appendices can be administered as to the adopting CLEC. If the adopting CLEC has an existing agreement, then that CLEC's existing ICA will need to be reviewed to determine what provisions, if any, should be replaced or superseded or need to be modified, with the incorporation of the three different appendices from three other agreements. This can require a great deal of time and negotiation up front to ensure that the resulting agreement contains provisions that are operational, that do not conflict, and therefore, that can be effectively administered by the Parties.

CONCLUSION

21. Contract negotiations can be quite challenging, even when both parties are interested in negotiating on a business-to-business basis and entering into an agreement that mutually benefits both parties. The imposition of the current Pick and Choose Rule makes interconnection agreement negotiations even more difficult and removes any incentive for ILECs to negotiate any provisions other than those necessary to implement what they are legally obligated to provide CLECs.

22. SBC considers its Wholesale clients as business partners rather than as adversaries.

Unfortunately, under the FCC's existing Pick and Choose Rule, CLECs attempt to "cherry

pick” only the most favorable provisions contained in approved and effective ICAs, and to exclude legitimately related provisions. This “cherry-picking” approach has a chilling effect on negotiations and diminishes both parties’ incentives to compromise during the course of negotiations. Finally, as addressed above, it is incredibly cumbersome to attempt to administer the Pick and Choose Rule as it stands today. For these reasons, I believe negotiations would be enhanced, and adoptions would be much easier to administer, if the FCC were to require that CLECs adopt all individual interconnection, network element and service arrangements contained in an approved and effective ICA in that state, and to eliminate its existing Pick and Choose Rule.

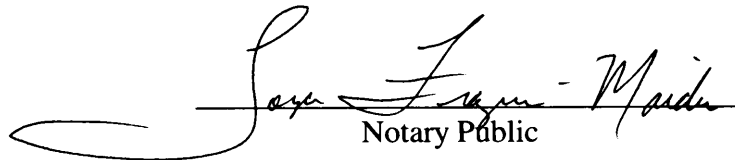
STATE OF TEXAS
COUNTY OF DALLAS

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I declare under penalty of perjury that the foregoing is true and correct. Executed on
April 27, 2004.
(date)


Terri D. Mansir

Subscribed and sworn to before me this 27th day of April, 2004.


Notary Public

